

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

CHRISTINA M. PEACH,

Plaintiff,
v.

Civil Action No.
5:12-CV-1850 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

APPEARANCES:

FOR PLAINTIFF

OLINSKY LAW GROUP
300 S. State Street
5th Floor, Suite 520
Syracuse, NY 13202

OF COUNSEL:

KAREN SOUTHWICK, ESQ.
JILLIAN C. KARAS, ESQ.

FOR DEFENDANT

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JEREMY A. LINDEN, ESQ.
ALEXANDER CRISTAUDO, ESQ.
Special Assistant U.S. Attorneys

DAVID E. PEEBLES
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner, pursuant to 42 U.S.C. § 405(g), are cross-motions for judgment on the pleadings.¹ Oral argument was conducted in connection with those motions on October 25, 2013, during a telephone conference at which a court reporter was present. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in her appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

¹ This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18 (formerly, General Order No. 43) which was issued by the Hon. Ralph W. Smith, Jr., Chief United States Magistrate Judge, on January 28, 1998, and subsequently amended and reissued by Chief District Judge Frederick J. Scullin, Jr., on September 12, 2003. Under that General Order an action such as this is considered procedurally, once issue has been joined, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

ORDERED, as follows:

- 1) Defendant's motion for judgment on the pleadings is GRANTED.
- 2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.
- 3) The clerk is respectfully directed to enter judgment, based upon this determination, dismissing plaintiff's complaint in its entirety.



David E. Peebles
David E. Peebles
U.S. Magistrate Judge

Dated: November 6, 2013
Syracuse, NY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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CHRISTINA M. PEACH,

Plaintiff,

vs.

5:12-CV-1850

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----x
Transcript of a Telephone Conference Decision
on October 25, 2013, at the James Hanley Federal
Building, 100 South Clinton Street, Syracuse,
New York, the HONORABLE DAVID E. PEEBLES, United
States Magistrate Judge, Presiding.

A P P E A R A N C E S

(Via Telephone)

For Plaintiff: OLINSKY LAW GROUP
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BY: JILLIAN C. KARAS, ESQ.

For Defendant: SOCIAL SECURITY ADMINISTRATION
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BY: ALEXANDER CRISTAUDO, ESQ.

(The following is an excerpt from the telephone conference held on 10/25/13.)

3 THE COURT: All right. I'll have to let that
4 be the last word. I'm prepared to give you my decision.

I have before me a plaintiff who filed a, an application with the Social Security Administration for Supplemental Security Income benefits or SSI on March 18, 2010, alleging an onset date of February 16, 2009. A hearing was conducted after an initial denial by the agency of that application on March 31, 2011 by Administrative Law Judge Marie Greener.

12 On June 8, 2011, ALJ Greener issued a decision
13 finding that the plaintiff was not disabled at the relevant
14 times and therefore is not eligible for SSI benefits. The
15 Social Security Administration appeals counsel denied review
16 of that determination on October 16, 2012, making the ALJ's
17 decision a final determination of the agency.

18 On -- this case was thereafter commenced
19 seeking review under 42 United States Code Section 405(g).

In terms of background, the plaintiff was born in May of 1978 and was 32 years old at the time of the hearing. She lives with her mother and has no children. She has a GED degree but no college education. She has previously worked in several positions, last worked in or about March of 2009 as a materials handler, a job from which

1 she was fired for sleeping. The plaintiff suffers from
2 mental health impairments, she has treated for approximately
3 eight years with Nurse Practitioner Andrew Catalone of the
4 Oswego Hospital Behavior Services Division and also on
5 occasion with Dr. Vilas Patil, although there's no record
6 evidence showing any visits to Dr. Vilas Patil, there is one
7 from Dr. Shuresh -- Suresh Patil. She has been diagnosed
8 principally with anxiety disorder not otherwise specified and
9 depressive disorder not otherwise specified although at
10 various times she has also been diagnosed as having
11 post-traumatic stress disorder, mood disorder, and impulse
12 control disorder. She's currently on a medication regimen
13 including Klonopin, K-l-o-n-o-p-i-n, Prozac, and Geodon. She
14 also, according to the administrative transcript, from time
15 to time receives health care from the Mexico Health Center
16 although that appears to be primarily for physical concerns.

17 The administrative law judge decision applied
18 the well-known five-step test for determining disability,
19 found that the plaintiff had not engaged in substantial
20 gainful activity at any relevant time. She suffers from two
21 severe disorders at step two, severe impairments including
22 depressive disorder and anxiety disorder. Excuse me. At
23 step three she concluded that the plaintiff's conditions do
24 not meet or medically equal any of the listed presumptively
25 disabling impairments. She then surveyed the medical

1 evidence and determined that the plaintiff retains the
2 residual functional capacity or RFC to perform a full range
3 of work at all exertional levels but with the following
4 nonexertional limitations: Can perform work that is
5 unskilled and low stress, meaning routine daily tasks and
6 duties that are not fast paced and do not significantly
7 change in pace or location on a daily basis, with only
8 occasional contact with the public.

9 In arriving at that RFC determination, the ALJ
10 rejected the disabling complaints of the plaintiff, concluded
11 that she does suffer from a condition that could be
12 reasonably expected to produce the symptoms complained of but
13 that her testimony was not credible. She also rejected
14 the -- and gave no weight to the medical source statement of
15 Nurse Practitioner Catalone, and properly explained that
16 fact. She gave great weight to the consultative findings of
17 Dr. Barry and the agency consultants. She -- she concluded
18 that the plaintiff is unable to perform her past relevant
19 work which she concluded was "fast paced".

20 Applying the grids, pursuant to Social
21 Security Ruling 83-11 and 83-15, she concluded that the
22 nonexertional limitations would have little or no effect on
23 the occupational base on which the grids are predicated, and
24 that the grids specified a finding of no disability.

25 First addressing the failure to provide

1 controlling weight or at least substantial weight or great
2 weight as the plaintiff's counsel indicated to Nurse
3 Practitioner Catalone's medical source statement, as I
4 indicated previously, that medical source statement contains
5 extremely limiting opinions. It is clearly not from an
6 acceptable medical source. It is grossly at odds with Nurse
7 Practitioner Catalone's notes including the plaintiff's
8 reports of symptoms to Nurse Practitioner Catalone. She met
9 monthly with Nurse Practitioner Catalone. In many instances
10 she denied having any psychiatric complaints or concerns,
11 that is included in January 18, 2011, which is at 238, and
12 there are several other references to that. There is
13 reference in Nurse Practitioner Catalone's notes that the
14 symptomology expressed by the plaintiff is being controlled
15 by her medications.

16 It is true that there is some indication of
17 modest anger issues, including on October 26, 2010 at page
18 242, September 11, 2010, at 243, and July 14, 2010, at 245,
19 although on that occasion she went back on trileptal to
20 control her anger and indicated that that had helped in the
21 past.

22 There was also some indication of "occasional
23 anger" on May 17, 2010, that's page 183, and some anger at
24 1 -- page 185, that's from February 17, 2010. Twice the
25 plaintiff was assessed a GAF score of 65, on October 6, 2010,

1 that's page 247, and March 17, 2010, that's page 182. A GAF
2 of 65 indicates the presence of some mild symptoms or some
3 difficulty in social, occupational, or school functioning
4 (e.g. occasional truancy or theft within the household) but
5 generally functioning pretty well. Has some meaningful
6 interpersonal relationships. The rejection of Nurse
7 Practitioner Catalone's report is also supported by this, the
8 report of Dr. Kristen Barry and Dr. -- nonexamining
9 consultant Dr. M. A-p-a-c-i-b-l-e, still can't pronounce
10 that.

11 So when we look at how the administrative law
12 judge is required to consider the opinions of Nurse
13 Practitioner Catalone, I apply Social Security Ruling 06-03P,
14 and it specifies factors which include, among other things,
15 how consistent the opinion is with other evidence. I think
16 that Judge -- Administrative Law Judge Greener properly
17 explained her rejection of that opinion, that medical source
18 statement and it is supported by substantial evidence, the
19 rejection.

20 In terms of credibility, I also think that the
21 ALJ properly weighed plaintiff's credibility. She looked to,
22 again, the medical evidence, she looked at reports of her
23 daily activities, both in terms of the disability report, the
24 hearing testimony, and her reports to Nurse Practitioner
25 Catalone concerning her daily activities. I note when it

1 comes to credibility, during the hearing, she claimed that
2 she suffers from side effects of her medication, that's at
3 page 47, and yet on at least four occasions she denied to
4 nurse practitioner experiencing any side effects, that's at
5 pages 236, 238, 244, and 245.

6 So I conclude that the ALJ properly rejected
7 plaintiff's complaints of disabling symptomology, and well
8 explained in her rejection which is supported by substantial
9 evidence.

10 Turning to the grids, and acknowledging that
11 we have a proper RFC determination, I have looked at *Bapp v.*
12 *Bowen*, and SSR85-13 and SSR85-15, and since we are dealing
13 with unskilled work, I do not find that the RFC determination
14 so erodes the job base on which the vocational -- the grids
15 are predicated as to require the testimony of a vocational
16 expert, so I find that the ALJ properly relied on the grids
17 as a framework and found that she is not disabled and was not
18 at any relevant time.

19 Accordingly, I grant judgment on the pleadings
20 to the Commissioner and will dismiss plaintiff's complaint.
21 I appreciate very much excellent briefing and the oral
22 argument was excellent, you both have a complete mastery of
23 the record, and of the arguments for and against reversing
24 the Commissioner's determination, and the court appreciates
25 that. Hope you have a good weekend.

1 MR. CRISTAUDO: Thank you, your Honor.

2 MS. KARAS: Thank you, you too, your Honor.

3 THE COURT: Goodbye.

4 (Proceedings Adjourned.)

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1 C E R T I F I C A T I O N
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4 I, JODI L. HIBBARD, RPR, CRR, CSR,
5 Official Court Reporter in and for the United States
6 District Court, Northern District of New York, DO
7 HEREBY CERTIFY that I attended the foregoing
8 proceedings, took stenographic notes of the same,
9 and that the foregoing is a true and correct
10 transcript thereof.

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JODI L. HIBBARD, RPR, CRR, CSR
Official U.S. Court Reporter

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